IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-3' NEW DELHI

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 4030/Del/2016
Assessment Year: 2012-13

SHREE SAI OIL COMPANY, BALLABGARH, SOHNA ROAD, SECTOR-23, FARIDABAD - 121001 **(PAN: ABFFS5911J)** **(APPELLANT)**	Vs.	DCIT, CIRCLE-II, FARIDABAD **(RESPONDENT)**

Assessee by: Shri S.K. GUPTA, CA
Revenue by: Shri F.R. MEENA, SR. DR

ORDER

This appeal is filed by the Assessee against the Order dated 13.4.2016 passed by the Ld. CIT(A), Faridabad relating to Assessment Year 2012-13 on the following grounds:-

1. The order passed u/s. 250(6) on 13.4.2016 for the asstt. Year 2012-13 by Ld. CIT(A) Faridabad, is bad by upholding the penalty levied by the Ld. AO of Rs. 1,28,000/- being wholly illegal, unlawful and against the principles of natural justice.
2. The Ld. CIT(A) was not justified in dismissing the appeal and confirming the disallowance of higher depreciation claimed by the appellant, which is the basis of the levy of penalty.
3. The ld. CIT(A) has grievously erred in not considering fully and properly the written submissions furnished by the appellant with regard to the impugned penalty.
4. The Ld. CIT(A) has erred in taking cognizance that merely because the appellant had claimed the higher rate of

depreciation which was not accepted by the AO, that by itself would not attract the penalty u/s. 271(1)(c).

5. The Ld. CIT(A) has erred in not taking the cognizance of rectification application u/s. 154 which was also within its ambit and also rejecting the plea of the appellant during the course of penalty proceedings that too by recording incorrect facts and findings.
6. The Ld. CIT(A) was not justified in considering the calculation of excess deprecation mistakenly by the appellant as intentional as the claim of higher depreciation was difference of opinion.
7. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

2. The brief facts of the case are that the assessee filed its return of income on 29.9.2002 declaring income of Rs. 27,06,662/-. The assessment in this case has been finalised u/s. 143(3) of the I.T. Act on 23.12.2014 at an income of Rs. 33,28,160/- by making following additions:

i) Addition of Rs. 4,14,241/- on account of excess depreciation on tanker.

ii) Addition of Rs. 7,261/- on account of disallowance u/s. 37(1) of the Act.

iii) Addition of Rs. 2,00,000/- on account of unverifiable expenses.

2.1 Thereafter penalty proceedings u/s. 271(1)(c) were initiated separately at the time of completion of assessment for concealment

of income / furnishing inaccurate particulars of income. The AO after considering the submissions of the assessee, imposed penalty of Rs. 1,28,000/- under section 271(1)(c) of the Act vide his order dated 22.6.2015 by holding that the assessee had furnished inaccurate particulars of his income.

3. Against the above Penalty Order dated 22.6.2015 passed by the Assessing Officer, assessee appealed before the Ld. First Appellate Authority, who vide impugned order dated 13.4.2016 dismissed the appeal of the assessee.

4. Against the above order of the Ld.CIT(A) dated 13.4.2016, assessee is in appeal before the Tribunal.

5. Ld. Counsel for the assessee stated that Ld. CIT(A) was not justified in dismissing the appeal and confirming the disallowance of higher depreciation claimed by the assessee, which is the basis of levy of penalty. He further stated that assessee has claimed depreciation on tanker at Rs. 5,91,773/- @ 50%, however, the AO has allowed the depreciation @15%. He further assessee aggrieved with the depreciation @15% filed an application dated 8.6.2015 u/s. 154 of the I.T. Act stating therein that depreciation @30% be allowed to the assessee, which was rejected by the AO vide his order dated 15.6.2015. He further stated against the order dated 15.6.2015, assessee preferred appeal before the Ld. CIT(A) who vide his order

dated 9.7.2015 directed the AO to recomputed the depreciation on both the tankers @ 30%, hence, he stated that the penalty imposed by the AO is not sustainable in the eyes of law as there is no concealment of income or furnishing of inaccurate particulars of income.

6. On the other hand, Ld. DR relied upon the order of the authorities below and requested that the Appeal of the Assessee may be dismissed.

7. I have heard both the parties and perused the records, especially the orders of the authorities below. I find that Ld.CIT(A) while disposing the appeal of the assessee against the order of the AO passed u/s. 154 of the I.T. Act vide his order dated 9.7.2015 has held as under:-

> *"8. I have perused the order of the AO and written submissions of the Ld. AR and I find that the AO has made two reasons to reject the contention of the appellant u/s. 154 of the Act. The first being that the mistake is not apparent from record and the second being that the appellant did not attend to this issue during the course of assessment proceedings. I find that after the detailed submissions made by the appellant during the course of proceedings u/s. 154 before the AO the appellant has given sufficient*

evidence to establish his claim. Moreover, the fact that the appellant has given the tanker on hire is also evident from the balance sheet of the appellant wherein an amount of Rs. 7,02,186 has been shown as the tanker hire receipts in the profit and loss account. The balance sheet was before the AO when the assessment u/s. 143(3) was framed. Thus from these facts it is evident that it is a mistake apparent from record and thus falls within the purview of section 154. The appellant is also furnished letter dated 8.8.2014 addressed to the AO and furnished to the AO during the course of assessment proceedings, wherein at Point No. 14 it has been clearly mentioned that freight charges on tanker have been received from Anil & Company (which clearly shows that the tankers have been given on hire). Thus I find that it is clearly established that the tankers have been given on rent and the allowable depreciation rate under these circumstances is @30% as against 15% allowed by the AO and 50% claimed by the appellant in his return of income. Thus the AO is directed to recomputed the depreciation on both the tankers @30%. Thus the appeal of the appellant is allowed."

7.1 After perusing the aforesaid finding, I note that Ld. CIT(A) observed that during the course of proceedings u/s. 154 before the AO the assessee has given sufficient evidence to establish his claim. Moreover, the fact that the assessee has given the tanker on hire is also evident from the balance sheet of the assessee wherein an amount of Rs. 7,02,186 has been shown as the tanker hire receipts in the profit and loss account. The balance sheet was before the AO when the assessment u/s. 143(3) of the I.T. Act was framed. It was further noted that the assessee is also furnished letter dated 8.8.2014 addressed to the AO and furnished to the AO during the course of assessment proceedings, wherein at Point No. 14 it has been clearly mentioned that freight charges on tanker have been received from Anil & Company (which clearly shows that the tankers have been given on hire). Thus I find that it is clearly established that the tankers have been given on rent and the allowable depreciation rate under these circumstances is @30% as against 15% allowed by the AO and 50% claimed by the assessee in his return of income. Thus the AO was directed to recomputed the depreciation on both the tankers @30%, which establishes that assessee has not furnished inaccurate particulars of its income and is not liable for penalty u/s 271(1)(c). Section 271(1)(c) of the I.T. Act postulates imposition of penalty for furnishing of inaccurate particulars and concealment of income. In this regard, I draw my support from the decision of the Hon'ble Apex

Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR-158 (SC) wherein the Hon'ble Supreme Court has held that *'where there is no findings that any details supplied by the assessee in its return are found to be incorrect or erroneous or false, there is no question of inviting the penalty u/sec. 271(1)(c) of the Act. A mere making a claim, which is not sustainable in law, by itself, will not amount of furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to furnishing a inaccurate particulars of income. As the assessee has furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely, because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty u/sec. 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty u/sec. 271(1)(c). That is clearly not the intendment of the Legislature".*

8. In the background of the aforesaid discussions and respectfully following the precedent, I am of the considered view that the assessee has not furnished inaccurate particulars of income. Under these circumstances, in our view the penalty in dispute is totally

unwarranted and deserve to be deleted. Accordingly, I delete the penalty in dispute and cancel the orders of the authorities below on the issue in dispute.

9. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 26/12/2016.

SD/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 26/12/2016

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches